

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE APRIL 14, 2003 MEETING

Commission Members:

Jane Wallis Gumble	Task Force Chair, Director, DHCD
Fred Habib	Facilitator, Non-Voting member, Deputy Director, DHCD
Mark Bobrowski	Municipal Consultant, Professor, New England School of Law
Senator Harriette Chandler	Senate Chair, HUD Committee
Jack Clarke	Director of Advocacy, Massachusetts Audubon Society
Howard Cohen	Board Member, Citizens Housing & Planning Association
Representative Michael Coppola	Massachusetts House of Representatives
Marc Draisen	Executive Director, Metropolitan Area Planning Council
Steve Dubuque	President, Massachusetts Non-Profit Housing Association
Representative Robert Fennell	(Absent) Vice Chair, HUD Committee
<i>Represented by Anna Waclawiczek</i>	
Thomas Gleason	Executive Director, MassHousing
Bennet Heart	Attorney, Conservation Law Foundation
Representative Kevin Honan	House Chair, HUD Committee
Michael Jaillet	MMA Housing Subcommittee
Al Lima	Planning Director, City of Marlborough
Bill McLaughlin	President, Rental Housing Association of the GBREB
Kathleen O'Donnell	Attorney, Kopelman & Paige
Gwen Pelletier	Board Member, Massachusetts Association of CDC's
Mayor Sharon Pollard	City of Methuen
Jeff Rhuda	Homebuilders Association of Massachusetts
Representative Harriett Stanley	(Absent) Massachusetts House of Representatives
<i>Represented by Todd Prussman</i>	
Senator Bruce Tarr	HUD Committee
Senator Susan Tucker	(Absent) HUD Committee
Senator Dianne Wilkerson	Massachusetts Senate
Clark Ziegler	Executive Director, Massachusetts Housing Partnership

Attendees (as documented on the sign-in sheet):

Judith Alland	Metropolitan Area Planning Council (MAPC)
Donna Ayer	Town of Stoughton
John Belskis	FOPC Arlington
Art Bergeron	
Chris Blanchard	New England School of Law
Representative Garrett Bradley	House of Representatives
Beth Bresnahan	DHCD
Karen Bresnahan	DHCD
Mike Cabral	New England School of Law
Michael Cahill	Town of Beverly
Ted Carman	Concord Square Development Co.
Timothy Carmier	Town of Merrimac
Louis Chin	Bentley College, Town of Scituate
Kevin Chisholm	Office of Representative Kevin Honan
John Clifford	Town of Marshfield
Debra J. Connolly	DTA, Housing Division
Marilyn Contreas	DHCD

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*Attendees Continued*

Joy Conway	Greater Boston Real Estate Board (GBREB)
Jim Coughlin	Canton Journal
Rob Crossley	Town of Merrimac
Mayor John Curran	Mayor of Woburn
Lynn Duncan	Town of Wilmington
Ben Fierro	Lynch & Fierro, LLP
Anne Marie Gaertner	DHCD
Aaron Gornstein	CHAPA
David Harris	Fair Housing Center of Greater Boston
Paul Haverty	Regnante, Sterio & Osborne, LLP
Representative Frank Hynes	House of Representatives
Mike Jaillet	Town of Westwood
Jim Juliano	New England School of Law
Judy Levenson	Office of the Attorney General
Patricia Lynch	Lynch & Fierro, LLP
Toni Macclowsky	New England School of Law
Mike McCue	Town of Mansfield
Amy MacNab	Duxbury Planning Board
Jennifer McNab	Town of Duxbury
KD Mernin	Office of Representative Carol Donovan
Chris Norris	CHAPA
Kristen Olsen	DHCD
Ellen Onorato	Grafton Housing Authority
David Petersile	Town of Stoughton
Joyce Petersile	Town of Stoughton
Frank Puopolo	Town of Georgetown
Barbara Rabina	GBLS
Ted Regnante	Regnante, Sterio & Osborne, LLP
Laura Rosen	Town of Stoughton
Bob Ruzzo	MassHousing
Kevin Sanginerio	Office of Senator Harriette Chandler
Matt Scafidi	New England School of Law
Angea Scieszka	Duxbury Planning Board
Robert D. Smith	Town of Barnstable
Robert Strugis	Boston Society of Architects
Lynn Sweet	LDS Consulting Group, LLC
Anne Tate	Office of Commonwealth Development
Representative Walter F. Timilty	House of Representatives
Maryann Young	Office of the Attorney General
Sarah B. Young	DHCD

Materials Distributed:

- Subsidized Housing Inventory Progress by Community
- Use Of Ch. 40B Compared With Local Conditions In Communities In The Merrimac Valley Region
- Project Eligibility Letters Issued Over Time
- Presentation by Dr. Louis Chin
- Written Comments From Ted Malone

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- Written Comments From Sue Jenkins
- Written Comments From John Clifford
- Written Comments From Stoughton Concerned Citizens
- Written Comments From Genevieve Davis
- Written Comments From Lynn Duncan
- Written Comments From Rob Crossley
- Written Comments From Jan Machnik
- Written Comments From Lynn D. Sweet
- Written Comments From David Petersile
- Written Comments From Amy McNAb
- Written Comments From Jay Talerman
- Written Comments From Andrew Friedlich

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Introductory Remarks & Adoption of March 6, 2003 Minutes:

Fred Habib, Task Force Facilitator and Deputy Director for DHCD brought the meeting to order shortly after 2:00 PM, and announced that the House was in full session and unfortunately this meant that some of the legislators would be arriving late or leaving early. Mr. Habib then asked Task Force members to direct their attention to the Draft Minutes of the March 31, 2003 meeting, and asked if anyone would like to recommend changes. No changes were proposed, and all Task Force members present voted to adopt the March 31, 2003 Minutes.

Scheduling of Additional Meetings:

Mr. Habib noted that at the previous Task Force meeting it was agreed that additional meetings would need to be scheduled in order to meet the May 31<sup>st</sup> deadline. He proposed that the Task Force meet next as scheduled on April 28th, and meet every week in May. He suggested that the first additional meeting be held on May 5th.

Jack Clarke, Director of Advocacy for the Massachusetts Audubon Society, suggested establishing specific goals and then scheduling meetings to meet those goals. He expressed concern that without setting specific goals, the Task Force would use as much time as scheduled and may not achieve its mission.

Mr. Habib supported Mr. Clarke's suggestion and offered to develop a list of specific goals for discussion at the next meeting.

Gwen Pelletier, Board Member of the Massachusetts Association of CDC's suggested that scheduling any additional meetings for 10AM would be convenient for Task Force members who had to travel from a distance.

Task Force members supported this suggestion, and it was decided that the additional meetings would be scheduled for 10:00 AM – Noon, starting May 5<sup>th</sup>.

Presentation of Data (requested at previous meetings)

Mr. Habib asked Task Force members to direct their attention to the packet of information that had been provided to them. He noted that each packet contained four sets of data that had been requested at previous Task Force meetings. The first item in the packet contained a document titled "Project Eligibility Letters Over Time" which summarized the number of project eligibility letters issued by month, included a chart illustrating the trend over time, and some slides from the power point presentation made by Bonnie Heudorfer at the March 18, 2003 meeting.

The second item in the packet was a spreadsheet showing HUD's estimates of the percent of low and moderate-income households by community and by county based on 2000 Census data.

The third item in the packet was a spreadsheet showing the use of Ch. 40B compared with local conditions in communities within the Merrimac Valley region. Mr. Habib explained that this data was prepared in response to request for information showing the "big picture". He added that because it was so much information, DHCD only assembled the data for a sample of communities. Mr. Habib pointed out that the spreadsheet showed information on building caps and building moratoria, building permits issued in 2002, median single family

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home selling prices, project eligibility letters, and comprehensive permits issued since 2001 for each community in the region. Mr. Habib observed that the comparison of the level of 40B activity with what was actually being built, was consistent with the information previously presented by Ms. Heudorfer. He added that the chart also shows the community's current subsidized housing inventory percentage, the number of "40B" units built since 1972 and the number of total housing units built since 1970 for each community in the region.

Mr. Habib noted that the fourth item in the packet titled "Subsidized Housing Inventory Progress by Community" contained data that Representative Harriett Stanley had requested. He added that the first few columns look at each community's Subsidized Housing Inventory percentage in 1997 and the progress they have made since. He noted that the middle columns show how many units a community would need to create in order to achieve 0.75% progress if all units counted (were rental) as well as the number of years it would take to get to 10% if doing 0.75% annually. He noted that the chart showed how if the new units were ownership units, and given how ownership units are currently counted on the inventory, it would require many more units to reach 0.75% progress annually. Mr. Habib noted that the last two columns in the spreadsheet are a somewhat confusing, but they are responsive to Representative Harriett Stanley's argument that when the next census is released communities will drop significantly more if they had done ownership as opposed to rental units. Mr. Habib added that Representative Harriett Stanley would present her own data at the next meeting.

Lawmakers and Local Residents Comment on issues with Chapter 40B:

Mr. Habib noted that at the March 31<sup>st</sup> Task Force meeting it was suggested that individuals from cities and towns should come in and speak to the task force. He explained that DHCD could have balanced the presentations between pro and con perspectives from communities but had intentionally asked people from communities with the most controversial 40B projects to speak to the Task Force. He added that each person was asked to submit their comments in writing, keep their comments to five minutes and focus on the problems they see with 40B and the possible solutions. Noting the number of people on the agenda and the time limitations for the meeting, Mr. Habib announced that for this meeting only, questions to presenters would be restricted to Task Force members only.

Representative Frank Hynes

Representative Hynes thanked the Task Force for the opportunity to speak, and stated that he was here to inform them that 40B doesn't work, it's broken and Massachusetts should get rid of it. He noted that Massachusetts is third most expensive place to buy home in the country, and that stated that the average household in Boston spends 44.9% of their income on mortgage payments. He also stated that 40B is 33 years old and has not had an impact. Representative Hynes noted that Massachusetts is the only state that has this kind of zoning regulation and that it has not had an impact on the affordability of housing. He also expressed his concern that 40B destroys planning, "trumps" zoning to the detriment of local concerns such as groundwater and wetland protection, and causes extraordinary anger and frustration in communities throughout the state. Representative Hynes suggested a moratorium on 40B projects due to the issues he had described and cited Marshfield as an example of a community where local groundwater and wetlands regulations can be "trumped" by 40B. He explained that most neighborhoods in Marshfield are not on public sewer and that the town had to adopt stricter groundwater requirements due to its sandy soil, which distributes chemicals such as chlorine from septic systems quicker than harder soils.

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He added that local requirements in consideration of these factors are dismissed by 40B. Representative Hynes suggested providing communities the opportunity to develop plans and strategies to create affordable housing consistent with character of the community. He also suggested requiring 25% of every subdivision to be affordable under 40A. He also suggested putting the planning board in charge of negotiating comprehensive permits with the developer. He proposed eliminating the 10% goal since only 30 communities had achieved it. He also noted that the counting policy for ownership units negatively impact's a community's ability to reach 10%. Representative Hynes suggested making housing authorities in charge of 40B developments once they are built, since they are in the business of affordable housing and have waiting lists of eligible households. He noted that the changes he has suggested would make the process more acceptable at the local level, and asked the Task Force to take as much time as needed to deal with 40B realistically, and to incorporate 40A with solution. He also requested that the Task Force establish a moratorium on 40B proposals while reviewing the options.

Mr. Clarke asked Representative Hynes if he had filed an amendment to require 25% affordability under 40A.

Representative Hynes responded that he had co-sponsored a bill to amend 40A to require 25% affordability.

Steve Dubuque, President, Massachusetts Non-Profit Housing Association asked ???

Representative Hynes responded that concerns over the need to protect groundwater and surface water gave rise to local bylaws and zoning and that when those concerns are trumped by 40B we are in danger of building affordable housing in short term, but losing water quality in the long term.

Senator Dianne Wilkerson noted that after three Task Force meetings she was convinced that 40B has had an impact but that what she is hearing from Representative Hynes was that communities don't want to do affordable housing- not that they want to do it another way. She noted that she has also been hearing that the more housing that is built the more issues and costs arise for towns.

Representative Hynes noted that he attended one of the previous Task Force meetings, and he had not heard that communities didn't want affordable housing at that meeting. He then noted that he had traveled in southeastern Massachusetts and that the concern he had heard was that the workforce couldn't find affordable housing. He added that 40B doesn't work since housing costs are so high. He also noted that the 30,000 affordable units built under 40B only represents 7.5% of all housing built in past 30 years, which is shy of the 10% goal.

Jeff Rhuda of the Homebuilders Association of Massachusetts, asked Representative Hynes to clarify whether the threat to groundwater and drinking supply posed by 40B that he had described was a threat to local regulations or to state standards.

Representative Hynes responded that it was a threat from the perspective of local regulations, and added that the Dept. of Environmental Protection (DEP) couldn't create statewide regulations for groundwater and drinking water issues that might be unique in each community.



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Mr. Rhuda stated that he wanted to make it clear that 40B overrides local water regulations only, not state DEP requirements.

Senator Robert Hedlund

Senator Robert Hedlund expressed his concern that there had been a public outcry for the reform of 40B, and noted that the Governor had campaigned on a platform that he would bring meaningful reform to 40B. Senator Hedlund suggested that the Task Force look at increasing the affordability component under 40B, noting that due to the disruption 40B brings to communities, they should get more affordable units. He added that 40B is often described as tool, but from some communities 40B is in reality more like a “sledge hammer”. Senator Hedlund then noted that speaking as someone who has friends that are developers, he has seen them profit greatly from 40B and that generally the HAC rules in the developer’s favor.

Mr. Dubuque noted that the new regulations allow communities to develop their own affordable housing plans and asked Senator Hedlund if any communities he represents had done so.

Senator Hedlund responded that he wasn’t aware of any such plans in his district and that 40B wasn’t an issue in his communities until a few years ago. He acknowledged that communities have been lax on this issue in the past and added that now communities are rushing to develop affordable housing plans to avoid 40B. He noted that 40B has become such a hot issue recently because communities in his district are near build-out and developers searching for developable parcels stand to make a greater profit with 40B than under 40A. Senator Hedlund then cited an example of a developer that had used 40B once to build 21 housing units on a parcel that was zoned to allow 3 units, and then decided to use 40B in later projects since it had been so profitable.

Mr. Clarke noted that there has been an agreement in the legislature to hold off on moving any 40B legislation until task force is done, and asked Senator Hedlund if he supported Representative Hynes’ suggestions.

Senator Hedlund noted that he was very disappointed that the Governor and legislative leadership chose to hold-off on moving 40B legislation since that decision disenfranchises many legislators on this issue. He noted that a review of the legislature last year would illustrate that 40B was one of the top issues. He then added that he hoped the Task Force would review the 60 bills on 40B that have been proposed this year. Senator Hedlund also noted that the expertise on different boards varies by town (planning board- ZBA) as board members are all volunteers. He added that he absolutely supports Representative Hynes’ suggestions, but that he doesn’t think tinkering around the edges was the solution.

Mr. Habib noted that he understands that most of the people on the agenda to speak are calling for moratorium on 40B. He explained that request is outside of the purview of the Task Force, and the meeting will continue with that knowledge. He then directed the speakers to focus on the issues the Task Force can impact.

Dr. Louis Chin - Scituate

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Dr. Louis Chin of the Town of Scituate, noted that he was an abutter to a 40B development called Walden Woods, and that he would like to address Mr. Dubuque's comments on affordable housing plans. (Copies of the power point presentation that Dr. Chin had prepared were provided to Task Force members). Dr. Chin noted that residents of Scituate responded to the proposal of Walden Woods in two ways, 1) they requested the town establish a moratorium on 40B projects and 2) they requested that the town develop an affordable housing plan. Dr. Chin noted that Scituate had recently submitted their plan to DHCD. He then noted that though the Scituate ZBA Chair had stated that the 28 units proposed in a 40B project was too many for the parcel, the ZBA voted to approve the project with 28 units anyway. Dr. Chin also described a situation where the price a developer paid for a parcel of land appeared significantly higher in the pro forma (\$800,000) than in the deed (\$200,000). He also expressed concern about the detrimental impact the Walden Woods Title 5 septic system is having on the older systems in neighboring properties and the inability of those residents to pay to have their old systems replaced.

Dr. Chin recommended that 25% of new construction statewide should be required to be affordable under 40A, with some density bonuses. He also recommended mandating towns to build affordable housing and funding this mandate with a revolving fund. He explained that this would allow towns to initiate affordable housing without relying on private developers and that it would stop private developers from profiting from affordable housing. Dr. Chin also distributed copies of a letter from Clark Ziegler, Executive Director, Massachusetts Housing Partnership (MHP) and Mark Bobrowski, Municipal Consultant and Professor at the New England School of Law, offering \$10,000 in technical assistance to the town of Scituate. Dr. Chin complained that this letter had not been presented by the ZBA at any public hearing, and though he had asked the ZBA chair to clarify Mr. Bobrowski's role he did not receive an answer.

Mr. Bobrowski explained that he had initially been hired to serve as the MHP facilitator for this project, but that when he called the town he was informed that an attorney from Kopelman and Paige had been attending the meetings and filling this role and that he was not needed. He noted that when the town requested that he hire a financial analyst to review the numbers he hired Laurie Gould and she was paid with some of the MHP technical assistance funds. He then added that he did not personally receive any of the MHP technical assistance funds for this project.

Mr. Clarke noted that he found the bullet points in the power point presentation that Dr. Chin had distributed to the Task Force somewhat confusing. Mr. Clarke observed that Dr. Chin's presentation shows that the ZBA had concerns about the project but voted to approve it anyway. Mr. Clarke added that it was his understanding that 40B doesn't throw out local concerns, but allows issues to be addressed in one permit. He then pointed out that it seemed like Dr. Chin's concern was with the ZBA's decision to approve the project despite their concerns, which is more like an intra-town dispute and not a statewide problem with 40B. He asked Dr. Chin if this was an accurate description of the problem.

Dr. Chin agreed with Mr. Clarke's observation that the issue was really an intra-town dispute and not a problem caused by 40B, but added that if it is happening throughout the commonwealth the problem needs to be addressed.



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Mr. Clarke then asked Dr. Chin if the Conservation Commission, the Board of Health and the Planning Board had fulfilled their responsibilities in reviewing the proposal.

Dr. Chin responded that the Conservation Commission had not fulfilled their responsibility in reviewing the proposal. He added that the Board of Health had given their approval but that the planning board had objected.

John Clifford- Marshfield Town Administrator

Mr. Clifford noted that 40B had not become a major issue in Marshfield until about 18 months ago, when an increase in 40B proposals stimulated tremendous local concern and confusion. Mr. Clifford acknowledged that the framework for local zoning control has resulted in a patchwork of local zoning requirements that are frustrating for developers. He added that the zoning process is cumbersome, time consuming and not pro-active. Mr. Clifford explained that summarily discarding a town's zoning is 'hard to handle' due to the amount of time and effort it takes to adopt zoning locally.

Mr. Clifford then described Marshfield's experience with a recent 40B proposal. He noted that at the first public hearing town residents were told that since the proposal was under 40B and not under 40A, input by all local boards could be discarded. He added that the citizens were informed that the ZBA lacks ability to deny the permit, and that by the end of the process citizens found that their local elected officials were essentially powerless to act in the best interest of the community. Mr. Clifford added that the ZBA's only options were either to issue the permit with conditions or deny it and then go through appeals process with the Housing Appeals Committee (HAC). Mr. Clifford then stated that the town perceived the outcome of the appeals process was predetermined, that the HAC is not really a committee, and that the HAC rules consistently in favor of the developer. He then added that the entire process is offensive to the notion of due process.

Mr. Clifford recommended providing a long term financial commitment to towns that have done 40B developments, establishing a statutory requirement for inclusionary zoning of high density senior housing which is easier to promote at local level and would open-up the existing housing stock for families. He noted that while the statute was created with the best of intentions, it has been ineffective since only 30 communities are compliant, and it is biased towards the developer.

Mr. Habib noted that if something is stated that is not true, he wants to correct it for the Task Force members and those in attendance. Mr. Habib then noted that the HAC is indeed a committee, and that Bonnie Heudorfer, an independent consultant, had previously presented statistics on HAC decisions to the Task Force and that the statistics show that HAC decisions are not all in favor of developer. *[At the March 18, Task Force meeting Ms. Heudorfer reported that of the 415 appeals filed with the HAC between 1990 and 2002, 45% were withdrawn or dismissed and 24% reached negotiated settlements with stipulations with the HAC. She noted that between 1990 and 2002 only 31% of the appeals filed with the HAC received an actual HAC decision. She added that of the 31% of the appeals that received HAC decisions, 84% were in favor of the developer and 16% were in favor of the municipality.]*

Howard Cohen, Board Member of CHAPA, noted that it seems that it is a distortion to say that only 30 communities are compliant with 40B (having reached 10%), and suggested that

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seeing the population of the communities that are over 10%, and the population of the communities that are in the range of 8-10% would show the true impact 40B has had.

Senator Dianne Wilkerson noted that she had heard Mr. Clifford say that the problems with 40B in Marshfield came up within past two years, and asked him what was going on in Marshfield until two years ago. She also asked Mr. Clifford how communities could build affordable housing on their own if they haven't done it in the past 30 years and how many affordable units communities built without 40B in the past 30 years.

Mr. Clifford responded that Marshfield has been doing small projects with Habitat for Humanity and that it has been pursuing senior housing.

Senator Dianne Wilkerson asked Mr. Clifford how many affordable units Marshfield had done within its priorities.

Mr. Clifford responded that the answer was none, but added that neither Marshfield nor the Commonwealth was not devoting resources to affordable housing. He noted that the local housing authority receives barely enough money to maintain its existing stock, and that it certainly did not have enough money to build new housing.

Bill McLaughlin, President of the Rental Housing Association of the GBREB, asked Mr. Clifford where he could find a parcel of land zoned for multifamily if he wanted to build multifamily in Marshfield.

Mr. Clifford responded that Mr. McLaughlin wouldn't find a parcel because Marshfield has no multifamily zoning.

Mr. Bobrowski noted that a study of the impact of inclusionary zoning done by Phil Herr for the Massachusetts Housing Partnership (MHP) showed that less than 2% of all affordable units were built outside 40B.

Fred Poupolo - Georgetown

Fred Puopolo of the town of Georgetown noted that he understood that 25% of units proposed under 40B must be affordable to households at or below 80% area median income, and that they must have either a state or federal subsidy. He noted that he understood that 40B also provides that limited dividend organizations can build under 40B with a state or federal subsidy. Mr. Puopolo expressed his concern that when an attempt was made to make private banks (issuing site approval letters under the New England Fund) more accountable, they withdrew from the process and have now been replaced by a state agency which receives application and administration fees from developers. He also expressed his concern at the absence of a relationship between the density increases of a project is proposing and the number of affordable housing units required of that project. Mr. Puopolo suggested limiting the density allowed under 40B to 1.5 times the allowed density. He also suggested creating a five-member panel that would initially review 40B proposals before they went to the ZBA. Mr. Puopolo concluded by stating that he supported repealing 40B and that he believed that just because 40B is the only tool (for affordable housing) it doesn't make it right.

Amy McNab - Duxbury Planning Board

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Amy McNab, Board Member of the Duxbury Planning Board, noted that last year Duxbury drafted a petition for the repeal of 40B which received 75 signatures from other towns. She added that the call for the repeal of 40B was not because people don't want affordable housing, but because 40B is punitive and regressive. She stated that today there is public demand for the reform of 40B. She stated that development practices under 40B and the overriding of local zoning and bylaws are unacceptable. Ms. McNab noted that one couldn't help but feel that all the effort it took the town to adopt a mandatory inclusionary zoning bylaw was rendered useless with 40B. She noted that 40B is punitive towards suburbs and rural towns and that it "pits" neighborhood against neighborhood. Ms. McNab also noted that Massachusetts has produced far fewer affordable housing units than California or Montgomery County in Maryland, which have more progressive tools for creating affordable housing. She noted that this shows that 40B is ineffective, not that towns are snobby. Ms. McNab expressed her concern that affordable housing is not being built in Massachusetts, and that the voices of towns and their legitimate concerns are being bypassed. She recommended more progressive means of achieving affordable housing goals.

Mr. Cohen asked Ms. McNab if she could share the statistics that she had cited on Maryland and California and noted that it would also be useful to see their multifamily zoning.

Ms. McNab responded that she did not have the statistics on hand, but would be able to provide them to the Task Force.

Senator Dianne Wilkerson noted that before 1997 Duxbury had 172 40B units and that it still has 172 40B units according to her chart (Subsidized Housing Inventory Progress by Community). She asked Ms. McNab what has Duxbury had done to create affordable housing on its own.

Ms. McNab responded that Duxbury is almost all built out and had been developing most of its land for market rate housing, but that Duxbury had just passed an inclusionary zoning bylaw requiring one out of every 6 units to be affordable in developments containing six or more units.

Mr. Rhuda asked Ms. McNab if Duxbury's inclusionary zoning bylaw provided any incentives to developers (such as a density bonus) or if it was burdensome to developers.

Ms. McNab responded that it did not provide a density bonus.

Mr. Rhuda noted that Duxbury's inclusionary zoning bylaw was burdensome and did not provide any incentive.

Mr. Clarke asked Ms. McNab how the inclusionary zoning would create affordable housing if there was no more land left to develop.

Bennet Heart, Attorney for the Conservation Law Foundation, asked Ms. McNab if there is land in Duxbury that allows multifamily.

Ms. McNab responded that there is no land in Duxbury that allows multifamily by right, but added that it was allowed by special permit for Planned Development.

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Ms. Pelletier asked Ms. McNab how many units had been built under Duxbury's inclusionary zoning.

Ms. McNab responded that since the bylaw had just passed no units have been built yet.

Lynn Duncan - Wilmington Town Planner

Lynn Duncan, Town Planner for the Town of Wilmington, stated that she has had previous experience with 40B applications. She noted that in one instance a developer came into her office, put a plan for a 40B project on her desk, and said "take it or leave it." She added that the town "left it" since the developer was not willing to negotiate. Ms. Duncan noted that in another 40B project that is currently before the ZBA, the planning board had a major concern about the noise from a neighboring industrial site and that the planning board has advised the developer to mitigate the noise or risk not receiving their recommendation.

Ms. Duncan noted that since she had started working for Wilmington in 1991 the town has worked very hard to create affordable housing. Ms. Duncan noted that in the 40B process Wilmington had been able to negotiate changes to improve the architectural design, increase the setbacks, increase the landscape buffers, reduce the number of buildings, receive infrastructure improvements that benefited neighbors, ensure units would be affordable in perpetuity, create preferences for locals, and receive funds for monitoring the affordable units. She noted that communities have more negotiating power than others seem to think. Ms. Duncan also noted that Wilmington had successfully developed town owned land for affordable housing. She added that it took about 5 years of work and resulted in about 3 affordable units. She also reported that Wilmington has used CDBG funds to rehabilitate 26 existing units as affordable housing, which are not yet reflected in the Subsidized Housing Inventory.

Ms. Duncan noted that she had heard a recommendation to use duplexes to create affordable housing locally. She expressed concern over this recommendation, noting that at town meeting in Wilmington a provision for duplexes on 60,000 square feet of land in their Master Plan proved to be the most contentious issue and that this nearly "sunk" the master plan. Ms. Duncan noted that she had worked with Habitat for Humanity of Lowell for 2 years on a project that would create one unit on 30,000 square feet of land in district that required only 20,000 square feet, but that the abutters successfully stopped the project.

Ms. Duncan noted that it is very difficult to get to 10% with only the affordable units in an ownership 40B project counting. She recommended counting all units, since all the units get the density bonus. Ms Duncan stated that if the two projects currently before the ZBA are approved and the recent CDBG units are counted, Wilmington would get to 9%. She added that it would potentially take an additional 280 ownership units to get to 10%. She noted that she believed that Wilmington has done its share and that it should get credit.

Mike Jaillet of the MMA Housing Subcommittee, asked Ms. Duncan if she believed that Wilmington would have been as active if there was no 40B.

Ms. Duncan responded that 40B has certainly been the catalyst for Wilmington's efforts, even though they haven't created as many units as the effort would warrant.

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Mr. Clarke noted that Ms. Duncan had mentioned that towns have more opportunities to negotiate than people seem to think. He asked her if it was a failure of the community to have not negotiated for the things that Wilmington had negotiated.

Ms. Duncan responded that she didn't think it was the failure of a community, rather a reflection of their resources and expertise.

Mr. Clarke asked if Duxbury, Scituate and Marshfield have professional planners.

Mr. Dubuque responded that all three communities have professional planners.

Attorney Kathleen O'Donnell recommended state support for communities that do not have professional staff.

Mr. Rhuda added that as a developer, he would much prefer to deal with professionals at the local level than with volunteers who aren't quite qualified and couldn't devote adequate time.

Mayor John Curran – City of Woburn

Mayor Curran noted that Woburn currently has four public housing projects, and four elderly public housing projects, Kimball court, and a case with Archstone pending before the HAC in which the ZBA approved project for 300 units but the developer wants 630 units. He noted that Woburn is currently going through a Master Planning process, which will contain a housing plan. Mayor Curran added that they were still in negotiation for Kimball court to get the units affordable in perpetuity, as the original requirement was for only 15 years. He noted that one downfall of 40B is that the units stay but the affordability can expire. He then recommended making sure that affordable housing built under 40B contains accessible units.

Mayor Curran noted that Woburn had previously downzoned the parcel on which the Archstone project is proposed due to traffic. He added that Woburn later passed a cluster development bylaw that allowed increased density, but that the developer did not take advantage of the density bonuses that this allowed. Mayor Curran expressed concern that developers are using 40B to overdevelop property in the suburbs, and the towns don't have the infrastructure to support it. Mayor Curran also noted the problem with the lack of zoning considerations that towns have to deal with, and explained that purchase price of the parcel of land for the Archstone development from Northeastern was actually dependant upon the number of units approved.

Mr. McLaughlin noted that the Archstone example Mayor Curran cited was unfortunate, and that even though it's on a large parcel the proposal still seems too dense. Mr. McLaughlin added that under the current regulations the project would not be allowed at that size.

Mr. Heart asked Mayor Curran if he believed the price from northeastern increased because of the knowledge that 40B could be used.

Mayor Curran responded that in the purchase and sale from Northeastern to Archstone, there was a bonus for each additional unit approved over 330 units. He added that the purchase and sale agreement had not been signed.

Representative Garrett Bradley:



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Representative Garrett Bradley noted that he has often heard that DHCD has done a lot with regulations. He expressed concern that regulations can change from administration to administration and recommend codifying the regulatory changes DHCD had made legislatively. He added that he would like to see some level of control returned to communities, and that he believed that in-law apartments should be allowed to be counted regardless of whether they existed prior to July 2001.

Representative Walter F. Timilty:

Representative Walter F. Timilty noted that the intentions of 40B are terrific, but that he is concerned that it is being misused. He also noted that he would like some control returned to communities

Robert Crossley - Merrimac

Robert Crossley of the town of Merrimac, noted that one problem with 40B is that the current definition of affordable housing does not include trailer parks. He noted that this actually reduces the amount of affordable housing and described an example of a town that had asked the proponent of a recent proposal for a trailer park to do modular homes on permanent foundations instead so that they would count towards the community's subsidized housing inventory. He added that the modular homes would be much more expensive than the originally proposed mobile homes. Mr. Crossley also noted that the definition of "affordable" under 40B is not really affordable, and stated that in Merrimac the existing rental stock is actually cheaper than "affordable" housing being built under 40B. Mr. Crossley also noted that limited resources available to towns prevent anything but the granting of a 40B permit, more specifically the ZBA does not have professionals on the board and does not have the money to pay for such professionals. He added that the ZBA was recently told that the administrator would no longer be able to take minutes at the hearings due to budget constraints. Mr. Crossley stated that the reality is that the ZBA couldn't afford anything but a rubber stamp. He added that he expects attorney costs for the appeals process to be in the range of \$50,000 - \$60,000. He concluded by noting that developers have a better chance to get a comprehensive permit in a community with lower incomes and with fewer resources than in a community with higher incomes and a greater ability to fight.

Mr. McLaughlin noted that he would rather build in a larger, more affluent community because the demand for housing would be greater than in a smaller less affluent community.

Mr. Heart noted that land value was a contributing factor.

Ellen Onorato - Grafton

Ellen Onorato, Chair of the Affordable Housing Committee in Grafton, noted that Grafton allows multifamily, but that the town has not done enough for affordable housing and the town selectmen have been "dragging their feet". Ms. Onorato noted that soon after the Affordable Housing Committee was put together, Grafton received its first 40B application on a parcel of land neighboring 128 acres the town had just purchased. She noted that the project was originally proposed for 456 units in a Area of Critical Environmental Concern (ACEC). She added that the developer had originally purchased the land for \$96,000, and had offered to sell the parcel to the town for \$8 million.



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Ms. Onorato noted that the Grafton ZBA had recently approved a 40B development with 250 units, and that they were starting the process working on a friendly 40B for over 200 rental units. She added that her major concern with 40B are environmental and noise issues. She noted that in 1992 the MassPike did a noise study on the land and that they had found the noise level to be 70.1 decibels. She added that the decibel level on the land is most likely even higher now, and that HUD won't build housing where noise levels are over 65 decibels. She added that the land also has a vernal pool and flood plains, information which was not provided to the ZBA. Ms. Onorato noted that this was suggestive that ZBAs are ignorant of their rights.

Mr. Habib informed Ms. Onorato that her time was up, and stated that the Task Force would review her written comments and suggestions.

Ms. Onorato opposed to being cut off, and insisted that she be allowed to continue speaking as the only speaker from central Massachusetts.

Mr. Habib asked Ms. Onorato if she could speak to any issues that were unique to central Massachusetts

Ms. Pelletier noted that the Task Force had Ms. Onorato's written comments and suggestions and that they would read them. Ms. Pelletier noted the need to respect the time constraints of the Task Force members.

Mr. Habib noted that the expectation for each speaker was 5 minutes, and that expectation had been had been honored. He added that the Task Force would review Ms. Onorato's written comments.

Mike McCue - Mansfield Selectman (representing Bob Kimball from Norton)

Mike McCue, of the Mansfield Board of Selectmen, noted that he had been asked by the Norton Board of Selectmen to present on both their behalf's. He noted the challenges faced by towns of unfettered 40B projects, and added that he resents the moniker of "anti-snob" legislation. He added that the Selectmen in Mansfield have been pushing initial funding for affordable housing initiatives which have not passed at the past few town meetings. Speaking for Bob Kimball, who he met while building an affordable home in town. Mr. McCue noted that 75% of housing built with 40B is market rate, and therefore 40B actually creates expensive housing. He added that towns can't control the number or price of these units. Mr. McCue also noted that some towns have realized up to 35% growth since the last census, which puts a huge stress on schools, water, sewer and other resources.

Mr. McCue noted that Mansfield drilled a new well last year which was required to meet strict state water requirements. He added that this effort from the town to meet these requirements goes out the window with a currently proposed 40B. He noted that 40B could also change the nature and culture of community, by changing the character of a town with huge developments. He noted that 40B proposal also contravene master plans, which are long thought out, carefully drafted documents designed to husband the community's resources

Mr. McCue recommended a moratorium on 40B projects "no matter what" because towns can't afford more housing right now with the recent cuts in state aid, even if the problems

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that he had identified were rectified. In addition Mr. McCue recommended limiting the number of 40B projects, giving more weight to communities, requiring more affordable units in 40B projects, and requiring affordability in perpetuity. He also suggested catching the towns that are really engaging in anti-snob zoning.

Mr. Habib asked Mr. McCue if he had any written comments that he would like to submit.

Mr. McCue said that he did have written comments.

Al Lima, Planning Director for the City of Marlborough, asked Mr. McCue if they had quantified the impacts of 40B.

Mr. McCue responded that they had, and that he would send the information to the Task Force.

Mr. Lima then asked Mr. McCue if the Board of selectmen had given the ZBA adequate support.

Mr. McCue responded that though the Board of Selectmen in Mansfield had supported the ZBA, that wasn't the case in all towns.

Mr. Cohen noted that Mansfield had done a good job, and asked if the 40B projects had impacted the culture.

Mr. McCue responded that it was really a neighborhood character issue.

Mr. Cohen asked if the sites currently being proposed are as good as previous projects.

Mr. McCue responded that the new sites are farther out of town than previously. He also noted that the downtown area had been developed through 40B.

Mr. Draisen asked if there was any evidence thus far that DHCD or the Housing Appeals Committee haven't taken planning into account.

Mr. McCue responded that he didn't know yet, and but that he was worried about that issue.

Senator Harriette Chandler asked Mr. McCue if a regional approach would make a difference.

Mr. McCue noted that he didn't support a regional approach, even if it benefited his town, as it had the potential to be unfair. He noted that that he supports lowering the 10% threshold. He added that Mansfield has been considering transferring, for a nominal value, town-owned land for affordable housing.

David Petersile - Stoughton (representing Donna Ayers and Joyce Petersile)

David Petersile, from the town of Stoughton, noted that he had read the minutes of previous Task Force meetings and was acquainted with their mission. He noted that Stoughton is not against affordable housing, and that Stoughton is an affordable community where average

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wages are below \$38,000 and about 1/3 of the units are apartments. He added that nearly half of housing stock in Stoughton is below the \$200,000 affordable housing threshold.

Mr. Petersile noted that Stoughton currently has two 40B applications before the ZBA, with four more in the pipeline. He noted that he would like to focus on the initial comment period issue by describing the Stoughton's experience with a 40B application under the New England Fund (NEF) proposing 112 units, 28 of them affordable. He then showed photos of an individual standing knee deep in water, next to the site. The neighbor had to spend 40K on septic system repairs, etc. as a result of the flooding (Army Corps of Engineers had already identified high water table at this site). Mr. Petersile noted that the parcel was not previously considered to be developable, but that it was under 40B. He added that in the MEPA process a certificate was issued recommending the proponent strongly reconsider redesign of the proposal for this site.

Mr. Petersile explained that the proponent didn't believe they have to abide the MEPA recommendations because 40B trumps local regulations and that the regulations place the burden of proof on the town. He added that Jane Wallis Gumble was petitioned to declare the original NEF site approval letter as null, and that the developer reapplied last June through MassHousing. Mr. Petersile noted that by this point the application was already four months in the local review process. He also noted that MassHousing extended the comment period, but the proponent withdrew from requesting financing. The developer then went back to the NEF. He added that the Conservation Commission denied issuing an order of conditions for the developer's notice of intent.

Mr. Petersile noted that DHCD has changed the regulations for 40B, and that at last summer's public hearings Mr. Gleason stated that some proposals shouldn't be built and that MHFA would deny inappropriate development proposals and consider comments. Mr. Petersile noted that the problem with the new regulations is that pre-existing NEF deals are not subject to them. He recommended that the Task Force fix this. Mr. Petersile then submitted the photograph packet that he had shown during his presentation.

Mr. Rhuda noted that the new regulations have a huge impact, and the Task Force could not ignore it.

Mr. Petersile noted that the Task Force should really consider issues that are raised by communities.

Mr. Draisen, noted that he understood the old NEF letter issue, and asked Mr. Petersile if he had seen evidence that HAC hasn't given deference to town planning issues. He then suggested that DHCD conduct outreach to help communities understand the regulations. He added that the regulations are making things more complicated and local officials don't have the capacity to keep up.

Mr. Lima asked Mr. Petersile if Stoughton had help examining the environmental concerns at the site.

Mr. Petersile responded that the Stoughton ZBA hired Horsley & Witten as experts on environmental issues.

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Ms. Pelletier noted that Mr. Petersile is reinforcing a key issue that has been raised before; ZBA's really need technical assistance.

Mr. Habib noted that Jay Talerman and Andy Friedlich had provided written testimony which has been distributed to the task force members and will be posted on the website.

Mr. Heart asked if the next meeting would include a legislative update.

Mr. Habib responded that the next meeting would include a legislative update as well as Representative Harriett Stanley's presentation.